



PROCEDURES FOR REPORTING FEDERAL CRIMES
BY NON-EMPLOYEES UNDER E.O. 12036 § 1-706

Section 1-706 of Executive Order 12036 requires senior officials of the intelligence community to:

Report to the Attorney General evidence of possible violations of federal criminal law by an employee of their department or agency, and report to the Attorney General evidence of possible violations by other persons of those federal criminal laws specified in guidelines adopted by the Attorney General.

These guidelines specify the violations of federal criminal statutes by non-employees which must be reported and provide reporting procedures.

A. Definitions

1. "Agency" shall mean:
 - a. The Central Intelligence Agency;
 - b. the National Security Agency;
 - c. the Defense Intelligence Agency;
 - d. offices within DoD for the Collection of specialized national foreign intelligence through reconnaissance programs;

DOJ Review Completed

- e. the intelligence elements of the military services, including the Army Intelligence and Security Command (INSCOM), the Counter-intelligence Directorate of the Air Force Office of Special Investigations, and the Internal Security Division of the Naval Investigative Service;
 - f. the Bureau of Intelligence and Research of the Department of State;
 - g. the Intelligence Division of the Federal Bureau of Investigation; and
 - h. the staff elements of the Office of the Director of Central Intelligence.
2. "Employee" shall mean an employee as defined in E.O. 12036, § 4-204.
 3. "Reportable offense" shall mean a possible violation of the federal criminal statutes listed in part C of these procedures.
 4. "Subject" shall mean a person, other than an employee of the agency, about whom an agency has, in the course of performing its lawful functions, acquired information that he is committing or has committed a reportable offense.

B. Policy and Interpretation

1. These procedures govern the reporting of information of which the agency or its employees become aware in the course of performing their lawful functions. They do not authorize an agency to conduct any investigation or to collect any information not otherwise authorized by law.

2. These procedures require an employee of an agency in the intelligence community to report to the general counsel of his department or agency facts or circumstances that appear to the employee to indicate that a criminal offense has been committed. Reports to the Department of Justice will be made by the general counsel of the department or agency or his delegate.

C. Reportable offenses:

Information or allegations showing that the following federal offenses may have been committed shall be reported:

1. Intentional infliction of physical harm to an individual:

Assault -- 18 U.S.C. §§ 111-113(a)

Homicide -- 18 U.S.C. §§ 1111-14, 1116, 2113(e)

Kidnapping -- 18 U.S.C. § 1201

The above offenses when committed in Indian

country -- 18 U.S.C. § 1153.

2. Deprivation of constitutional or civil rights:

Deprivation of constitutional rights --

18 U.S.C. §§ 241-42, 245

Unlawful electronic surveillance --

18 U.S.C. §§ 2511(1), 2512(1), 50 U.S.C. § 1809.

3. Crimes affecting the integrity of U.S. government functions:

Bribery and conflict of interest -- 18 U.S.C.

§§ 201-08

Conspiracy to injure or impede an officer --

18 U.S.C. § 372

Congressional assassination, assault, or

kidnapping -- 18 U.S.C. § 351

Counterfeiting U.S. obligations -- 18 U.S.C.

§ 471-74

Election contributions and expenditures --

2 U.S.C. §§ 441a-j, 599-600

Extortion by government employee -- 18 U.S.C.

§§ 872, 974

False statements and false official papers --

18 U.S.C. §§ 1001-02, 1017-18

Fraudulent claims -- 18 U.S.C. § 286-87

Obstruction of justice -- 18 U.S.C. § 1503-06,

1508-10

Passport and visa offenses -- 18 U.S.C.
§§ 1541-44, 1546

Perjury -- 18 U.S.C. §§ 1621-23

Presidential assassination, assault, or
kidnapping -- 18 U.S.C. § 1751

Theft of government property -- 18 U.S.C. § 641

Threatening the President -- 18 U.S.C. § 871.

4. Espionage, sabotage, and serving as a foreign
agent:

Acting as an unregistered foreign agent --
18 U.S.C. § 951

Communicating classified information --
50 U.S.C. § 783(b)

Communicating restricted data -- 42 U.S.C.
§ 2274-77

Espionage -- 18 U.S.C. §§ 793-98

Failure to register as foreign espionage
trainee -- 50 U.S.C. §§ 851-55

Foreign Agents Registration Act -- 22 U.S.C.
§ 618(a)

Government employee acting for a foreign
principal -- 18 U.S.C. § 219

Sabotage -- 18 U.S.C. §§ 2151-57.

5. Crimes affecting the foreign relations of the United States:

Arms Export Control Act -- 22 U.S.C. § 2778

Corrupt Payment to Foreign Officials -- 15 U.S.C. § 78dd-1, 78dd-2

Export Control Act -- 50 U.S.C. § 2405

Neutrality offenses -- 18 U.S.C. §§ 956-60

Trading with the Enemy Act -- 50 App. U.S.C.

§§ 5(b), 16.

6. Crimes relating to controlled substances, when committed in the course of commercial traffic in substantial amounts of Schedule I, II, or III controlled substances:

Manufacture, distribution, dispensing, or possession with intent to manufacture, distribute, or dispense by an unauthorized person --

21 U.S.C. § 841(a)

Manufacture or distribution of controlled substance with knowledge or intent that it will be unlawfully imported -- 21 U.S.C. § 959

Unlawful importation of controlled substances

-- 21 U.S.C. § 952.

7. Crimes characteristic of terrorist activity, when committed as part of a pattern of international terrorism:

Aircraft piracy -- 49 U.S.C. § 1472(i)

Distribution, possession, and use of explosives
-- 18 U.S.C. §§ 842(a)-(i)

Distribution, possession, transfer, and use of
firearms -- 18 U.S.C. §§ 922, 924; 26 U.S.C.
§ 5861

Transporting explosives on board aircraft --
49 U.S.C. § 1472(h)

Unlawfully entering the United States --
8 U.S.C. § 1325.

8. Attempt or conspiracy to commit any of the above offenses.

D. Reporting Procedures

When information or allegations are received by an agency that a subject has committed or is committing a reportable offense, the agency shall transmit the information or allegations to the Department of Justice in the following manner:

1. In a case where no public disclosure of classified information or intelligence sources and methods would result from further investigation or prosecution, and the security of ongoing intelligence investigations would not be jeopardized thereby,

the agency will report the matter to the cognizant office of the Federal Bureau of Investigation, other appropriate Federal investigative agency, or to the appropriate United States Attorney or his designee for an investigative or prosecutive determination.

2. In a case where further investigation or prosecution would result in the public disclosure of classified information or intelligence sources and methods or would jeopardize the conduct of ongoing intelligence operations, a letter explaining the facts of the matter in detail will be forwarded to the Criminal Division. The agency will also forward to the Criminal Division a separate classified memorandum explaining the security or operational problems which would arise from a criminal investigation or prosecution, including, but not limited to:

- a. Public disclosure of information needed to prove the offense or to obtain a search warrant or an electric surveillance order under chapter 119 of Title 18, United States Code;

- b. Disclosure required by a defense request for discovery of information under Rule 16 of the Federal Rules of Criminal Procedure, 18 U.S.C. § 3500, or Brady v. Maryland, 373 U.S. 83 (1963); and
- c. Interference with the voluntary provision by the subject or persons associated with the subject of cover or other services necessary for intelligence operations.

The Criminal Division, after necessary consultation with the agency, will determine whether to further investigate or prosecute. The agency will be informed of such determination in writing.

E. If the subject of a referral is an employee of another agency other than a person subject to the Uniform Code of Military Justice, the Criminal Division may refer the matter to that agency for preliminary investigation and possible administrative action. The employing agency will report the results of any such preliminary investigation under the procedures for reporting possible crimes by agency employees.

F. If the subject of the referral is a person subject to the Uniform Code of Military Justice, the Criminal Division will coordinate the handling of the matter with the appropriate

